

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

no log no

FILE: B-186659

DATE: August 26, 1976

MATTER OF: Abbott Power Corporation

99592

DIGEST:

Failure to separately price items for first article test reports as provided for in IFB was not material deviation requiring rejection of bid as nonresponsive as bid indicated price for reports was included in item prices and bidder was therefore obligated to provide data.

Invitation for bids (IFB) DSA400-76-B-4030 was issued on April 30, 1976, by the Defense General Supply Center, Richmond, Virginia, for the purchase of two types of distribution centers under items 0001 and 0004. The solicitation also called for first article approval-contractor testing unless waived. The IFB indicated in the "Unit Price" column that items 0002 and 0005 (preproduction sample testing) need not be separately priced (NSP) but the cost should be included in items 0001 and 0004. The low bidder, Porta Power Pak, Inc. (PPPI), inserted "NSP" in the Unit Price column for items 0003 and 0006 (First Article Test Reports).

Abbott Power Corporation (Abbott) contends that PPPI was not obligated to furnish the required data because no price was quoted for items 0003 and 0006 and, therefore, the bid should be rejected as non-responsive. In Chemical Technology, Inc., B-179674, April 2, 1974, 74-1 CPD 160, we stated:

"Our Office has held consistently that a deficiency or deviation which goes to the substance of the bid by affecting the price, quantity or quality of an article offered, so as to be prejudicial to the rights of other bidders, is a major deviation which may not be waived or cured and requires the bid to be rejected as nonresponsive. 30 Comp. Gen. 179 (1950); B-175243, June 16, 1972. However, a deficiency which is a matter of form, or which constitutes some immaterial deviation from the exact requirements of the specifications which would not affect

either the price, quantity or quality of the article offered, is a minor informality which may be waived or cured. 37 Comp. Gen. 190, 192 (1957); 52 Comp. Gen. 265 (1972). What constitutes a minor deviation is dependent on the particular circumstances present in each case. B-176425, October 18, 1972."

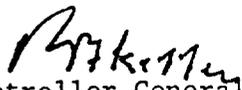
While the IFB provided for insertion of a unit price for items 0003 and 0006, we do not view the failure to insert a unit price as a material deviation requiring rejection of the low bid. The only reasonable interpretation of the entry of "NSP" opposite the items is that the cost of the test reports was included in the price for items 0001 and 0004 and not separately priced. Therefore, the failure of PPPI to submit unit prices may properly be waived as a minor informality since PPPI is obligated to furnish the first article test reports if the first article testing is required. Armed Services Procurement Regulation § 2-405 (1975 ed.); See Chemical Technology, Inc., supra.

Furthermore, in section C46 PPPI provided for a decrease in price of \$177 each, if First Article Testing is waived. If the testing is waived there will be no need for the test reports and the PPPI bid contains the necessary information for an appropriate price reduction for both the first article testing and the reports.

Abbott cites 41 Comp. Gen. 412 (1961) as authority for rejecting PPPI's bid as nonresponsive. However, the cited case is factually distinguishable from the one at hand. There, the low bidder failed to submit a price on the required engineering data and no basis was found for concluding that the price of the data was included in the cost of the equipment. The acceptance of the low bid, then, would not have obligated the bidder to furnish the data for which no prices were quoted. Whereas here, while the reports were not separately priced, PPPI clearly was obligated to furnish the reports unless waived by the Government.

Accordingly, the protest is denied.

Acting


Comptroller General
of the United States